

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

United States of America

v.

Case No. 2:05-cr-55-2

Allen McBride

Date of Original Judgment: October 20, 2005

Date of Previous Amended Judgment: June 13, 2008

ORDER ON MOTION FOR REDUCTION OF SENTENCE

This matter is before the court on the defendant's motion under 18 U.S.C. §3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. §994(u). The motion was originally filed as a disputed case, and the government requested and was granted a stay to further investigate the circumstances of the case. Defense counsel later filed a notice that the case was no longer disputed, and that there is no further need for a stay. Accordingly, the stay previously imposed is hereby lifted.

Defendant was convicted of Count 1 of the indictment, conspiracy in violation of 21 U.S.C. §846, and was sentenced to a term of incarceration of 132 months. Based on a previous reduction of the guideline sentencing range in 2008, defendant's sentence was reduced to a term of incarceration of 130 months. Defendant now seeks a reduction of the term of incarceration previously imposed on Count 1 in light of Amendment 748 to the United States Sentencing Guidelines ("U.S.S.G.").

The parties agree that defendant meets the Sentencing

Commission's eligibility requirements for the retroactive application of Amendment 748 to his case. The parties further agree that defendant's early release would not present a danger to the safety of the public. The parties jointly recommend that defendant's sentence on Count 1 be reduced to a sentence of 120 months incarceration.

Whether to grant a reduction of sentence pursuant to §3582(c)(2) is within the discretion of the court. United States v. Ursery, 109 F.3d 1129, 1137 (6th Cir. 1997). In considering whether a reduced sentence is appropriate, this court must consider the factors in 18 U.S.C. §3553(a) to the extent that they are applicable. §3582(c)(2).

Having considered the motion, and taking into account the policy statement set forth in U.S.S.G. §1B1.10 and the sentencing factors set forth in §3553(a), the motion is hereby granted. The sentence of imprisonment of 130 months previously imposed in the last amended judgment dated June 13, 2008, is reduced to a sentence of 120 months incarceration on Count 1.

However, the reduced term of imprisonment ordered pursuant to §3582(c)(2) may not be less than the term of imprisonment the defendant has already served. United States Sentencing Guidelines §1B1.10(b)(2)(C). Therefore, if the reduction of 10 months ordered in this case is greater than the amount of time remaining to be served by the defendant prior to the defendant's release date, then the defendant's sentence will be reduced by the amount of time remaining until defendant's release date, in other words, to time served.

Except as provided above, all other provisions of the judgment previously entered in this case shall remain in effect.

It is so ordered.

s\James L. Graham  
James L. Graham  
United States District Judge

Order Date: January 18, 2012

Effective Date: January 28, 2012